DRN-4039184

The complaint

Mr and Mrs G complain Chase de Vere Independent Financial Advisers Limited (Chase) mis-sold them a reviewable whole of life (RWOL) policy.

What happened

In 1995, Mr G met with an adviser from a business Chase have since acquired liability for. Mr and Mrs G were married and both aged 35 at the time with two dependants. Mr G earnt £38,000 a year with a net disposable income of £1,000 per month.

Mr G was advised to take out a joint RWOL policy providing £115,500 of cover payable on the first death, for a premium of £39.94 per month. In 1996 and 1998 Mr and Mrs G accepted the policies inflation protection option increasing the sum assured to £127,399 and the monthly premium to £50.03.

In August 2020, Mr G complained to Chase after receiving a policy review letter advising their premiums would need to be increased to maintain the sum assured, or the sum assured would be reduced.

Mr and Mrs G say they were never informed this would potentially be the case and said that the adviser at the time described the product as providing a guaranteed death benefit for a fixed monthly premium.

Chase didn't uphold the complaint. They said the documents issued to Mr and Mrs G at the time explained the cover and premium were guaranteed for ten years and then were thereafter subject to review. Chase also said they believed Mr and Mrs G had raised the complaint outside of the timescales allowed.

Mr and Mrs G remained unhappy, so referred their complaint to the Financial Ombudsman Service.

Our Investigator first looked into our jurisdiction to consider Mr and Mrs G's complaint and thought it had been raised in time. Chase agreed with our Investigators view and confirmed they would await their review.

Looking into the merits of the case, our Investigator said she thought the documentation from the time of the sale made it clear the policy would be subject to review, so didn't think Chase needed to do anything to put things right.

Mr G disputed ever having received some of the documents our Investigator referred to, saying he believed these may have been intentionally withheld by the adviser at the time. In addition, after receiving a copy of the policy's technical guide, Mr G was also unhappy the adviser had sold him a high-risk policy meaning it very likely the premiums would increase.

Our Investigator considered Mr and Mrs G's comments but remained of the opinion that the documents, when considered collectively, made them aware the sum assured was only guaranteed for ten years, after which it would be reviewed. As no resolution could be

reached, this case has been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

After reviewing the complaint, I didn't fully agree with our investigator. So, I issued a provisional decision on 24 February 2023. In this I said:

I've considered all the evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't currently agree our Investigators view goes far enough, nor do I agree Chase don't need to do anything to put things right. I'll explain why.

But first, I'm aware I've summarised this complaint in far less detail than has been provided, and I've done so using my own words. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. Mr and Mrs G have presented their case in a detailed manner, and I thank them for this. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every detail to be able to reach what I think is the right outcome reasonable in the circumstances of this complaint.

And, where evidence is incomplete, inconclusive or contradictory, I've looked to reach my decision about the merits of this complaint on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and wider circumstances.

To date the focus of this complaint has centred around whether Mr and Mrs G were informed at the point of sale that they'd potentially need to increase the monthly premium they paid in order to maintain the sum assured.

Mr and Mrs G have provided a detailed response as to why they disagree with our Investigators position on this point, so I think it's important for me to address below. But our investigation into every complaint is inquisitive by nature – we ask questions and make enquiries to enable us to reach a fair and reasonable outcome. It's only right that we do so, to uphold the integrity of our statutory role.

Chase's final response letter (FRL) confirmed as part of their investigation they completed a full review of their file, looking at Mr and Mrs G's personal and financial circumstances at the time of the advice, in addition to considering any documentation they would've received.

As part of my investigation, I've done the same and having taken everything into consideration I don't think the recommendation for Mr and Mrs G to take out a RWOL policy was suitable. I'll explain why.

Reviewable nature of the RWOL policy

Mr and Mrs G believe the RWOL policy sold to them in 1995 was unsuitable because they say the adviser told them it provided a guaranteed sum assured for a fixed monthly premium until one of them were to pass.

I'm aware Mr and Mrs G dispute receiving some of the documentation our Investigator has relied on. And I can't say with certainty all the documents mentioned, for example the technical information document, were received by them. But in the circumstances of this case, I don't find it necessary to decide as to whether I think the disputed documentation was, on the balance of probabilities, received or not to reach a fair and reasonable outcome to this case.

This is because I've reviewed the documentation I do know was received, such as the 'Personalised Key Features of the Investment and Life Plan' and I'm satisfied it sets out in a clear and not misleading manner that the 'guaranteed death benefit' was only guaranteed for ten years, after which regular reviews would be conducted.

The document further says under the 'What happens if we cash in early' section –

"The figures you might get back shown above for terms greater than ten years do not take into account the contribution increases that are likely to be required at one or more of the plan reviews to maintain the same guaranteed death benefit."

In addition, section 8 of the 'Policy Document' provided to us clearly sets out the reviewable nature of the policy and says –

"If the Actuary decides that those contributions when added to the bid value of the units allocated to this policy at that time are insufficient to meet the policy charges, one or both of the following shall apply with effect from the review date; either

i. the guaranteed death benefit shall be reduced; or

ii. the contribution shall be increased"

It follows that specifically regarding the guaranteed sum assured for a fixed premium nature of the policy, I'm satisfied based on the evidence available to me that the documents set out in a clear, fair, and not misleading manner the policy was reviewable.

Suitability of the advice given in 1995

First, it's important to say my role isn't to put a consumer back into a position better than they would've been in had an error not occurred.

Mr and Mrs G want Chase to reinstate their policy to the sum assured prior to the failed 2020 review – for the same continued monthly premium. They feel Chase should cover any additional premium increase required to maintain it until the policy pays out.

But asking Chase to cover unlimited premium increases to guarantee a sum assured of £127,339 wouldn't be putting them back in a position they would've ever been in. I say this because that amount of guaranteed cover was never available for a fixed monthly premium of £50.03. Instead, I've decided what I think should have happened and reached what I consider a fair and reasonable outcome in the circumstances of this case.

As I've previously explained I've taken everything both Mr and Mrs G and Chase have said into consideration. But due to the passage of time that has passed, over 22 years, I've placed more weight on the evidence I do have from the time of the advice.

The fact find completed at the time says Mr G wanted 'life cover to age 60' which was also recorded as his target retirement age. Furthermore, the recommendation letter says Mr G wished to replace the Death in Service benefits from his existing employers pension scheme

– which again fits with wanting cover until he retired.

Mr and Mrs G were both 35 at the time of the advice meaning I'm satisfied it's more likely than not that their priority was arranging cover for 25 years – until they were both aged 60.

Mr G says the adviser explained there were two types of policy. Type 1 - a level term policy which provided cover until a specified age and type 2 – the RWOL policy they took out which provided cover until either life assured died.

Based on the adviser's description, Mr G says type 2 appealed to him as he understood it to provide a guaranteed inheritance for their sons. And for the reasons I've explained, whilst I'm satisfied the reviewable nature of the policy was made clear, the policy was set on a maximum cover basis meaning the policy provided the highest level of cover for the premium paid.

In their FRL Chase said there is no way that either the adviser or the policy provider would have known at the time the policy was issued, if premium increases would possibly be needed to maintain the same amount of cover as a result of any review in the future.

But I don't agree this was the case. The technical information provided at the time says regarding the maximum cover option:

"Maximum cover

This amount is the maximum level of guaranteed death benefit that can be maintained for ten years, regardless of investment performance. However, it will usually be necessary to increase contributions after the initial ten years period, if this level of guaranteed benefit is to continue."

When deciding if the advice given was suitable for Mr and Mrs G, I've considered the options available at the time.

Mr and Mrs G could have taken out a RWOL policy but set up on a different level of cover. However, both the 'Minimum cover' and 'Balanced cover' options would have provided them a lower sum assured and for a higher monthly premium. In addition, neither option would have been without risk of review and possible premium increase. Neither option would have provided a guaranteed inheritance – the exact reason Mr G says the RWOL option appealed to him.

Mr G has said himself he likely would have taken the option of a level term policy had an option that provided a guaranteed inheritance for his sons for whole of life, for a fixed premium not been available.

I simply don't know if a non-reviewable RWOL policy was something the adviser was able to recommend at the time. But had he been able to, it would've been significantly more expensive than the policy Mr and Mrs G went on to take out.

So even if I was able to establish if the adviser was able to recommend that type of cover, which I can't, whilst they may have been able to afford a higher premium, I'm not able to say with any certainty that Mr and Mrs G would have gone ahead with this option.

But a level term policy would have provided Mr and Mrs G a guaranteed sum assured for a fixed premium – albeit for a set term. I think this option matches Mr G's requirement at the time - life cover to 60 - and his desire to replace a death in service benefit which would have ended on retirement and would have been a suitable recommendation for the advisor to

have made.

Taking everything into consideration, based on the information available to me, I've seen nothing to suggest recommending a RWOL policy was suitable for Mr and Mrs G circumstances at the time, and I'm satisfied the recommendation of a level term policy for 25 years would have been suitable for their needs.

Had suitable advice been given I think on balance, Mr and Mrs G would've taken out a 25-year level term policy.

To put things right I said:

- *Chase should determine the cost of a 25-year level term joint life policy providing £115,500 of cover from September 1995 to September 2020.*

Should Chase not be able to calculate what the cost would have been based on the rates and costs in 1995, I consider it fair and reasonable in the circumstances of this case that they should obtain a quote as at the present rates and costs for a 25-year policy based on Mr and Mrs G's circumstances, such as age, health and pre-existing conditions as at the time the whole of life policy was sold.

- *Chase should then calculate the difference between what Mr and Mrs G have paid towards the RWOL policy between its inception in 1995 to date and what they would've paid had the 25-year level term policy been sold instead.*

I've considered that Mr and Mrs G have remained on risk since September 2020 but had suitable advice been given, they wouldn't have been in this position and would've stopped paying premiums when the term policy ended. So, I'm satisfied this redress is fair and reasonable in the circumstances of this case.

- *If Mr and Mrs G have suffered a loss, Chase should pay them the difference, less the surrender value of the RWOL policy at the time of settlement.*

- *Chase should also add 8% simple interest to any sum owed to Mr and Mrs G from September 1995 until the date of settlement.*

If Chase considers that they're required by HM Revenue & Customs to take off income tax from any interest due to Mr and Mrs G, they should tell them how much they've taken off.

They should also give Mr and Mrs G a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Finally, as the surrender value of the RWOL policy is to be deducted from any redress due to Mr and Mrs G, it is for them to decide if they wish to cancel the policy or retain it.

Should Mr and Mrs G choose to retain the policy, they'd be doing so on the understanding they're responsible for all premiums due, and that the sum assured may potentially drop further, as low as £17,075, unless premiums are increased to maintain the sum assured in line with any future reviews.

Both Mr and Mrs G and Chase provided comments in response to my provisional decision.

Both parties have also now confirmed they have no further comments to add so I've considered all the comments provided and whilst what I've decided Chase needs to do to put things right differs slightly, my overall decision remains the same. I'll explain why.

Mr and Mrs G accepted my provisional decision in principle. But they said Chase should provide them details of how they'd calculated any redress owed, including the criteria used and the extent of their search to determine the cost of a 25-year level term policy. They provided a range of quotes they'd obtained and said if Chase's quote was reasonably close to those it would be acceptable.

In response, I said should Chase not be able to calculate what the cost of a 25-year level term policy would've been based on the rates and costs in 1995, which they should look to do in the first instance, it was fair they should obtain a minimum of three quotes and use the cheapest for the basis of their calculations. I also said Chase should provide details of their calculations to Mr and Mrs G in a clear and simple format.

Chase disagreed with my provisional decision saying the documentation provided clearly illustrated that the plan was reviewable, and the premium level and cover was guaranteed for the first ten years, after which it was reviewable. They say Mr and Mrs G were clearly aware the policy was a whole of life plan and there is no documentary evidence the cover and premium were guaranteed past ten years.

Chase also located a term assurance quotation that was run in the name of Mr G only in 1995, which they say was to provide a cost comparison.

I've considered Chases comments in detail, but they haven't changed my mind. This is because, as I said in my provisional decision, I agree the documents provided set out in a clear, fair, and not misleading manner the policy taken out was reviewable. My decision isn't based on Mr and Mrs G being aware or not that the policy was a whole of life plan.

Rather, it's that I've seen nothing to suggest the recommendation of the whole of life plan was suitable and for the reasons I've previously explained, I'm satisfied the recommendation of a joint level term policy for 25 years would've been suitable for their needs.

I've also considered the level term quote produced at the time in the name of Mr G only, but I've seen nothing to suggest this was presented to Mr G. The fact-find was completed four days prior to the quote being produced and on the same day the recommendation letter was sent out, which makes no mention of a comparison having been provided.

For these reasons, and for the reasons in my provisional decision, my decision remains that this complaint should be upheld. However, Chase also raised questions about the redress I'd set out in my provisional decision.

Regarding interest payable at 8% on any redress owed, Chase questioned on what figures should it be applied. They also said the date of the surrender value used should be as of September 2020, not the surrender value at the date of settlement.

I confirmed regarding the interest, should there be a difference in premiums between a level term and the whole of life policy, Chase should calculate from the date each premium was paid (or if they should choose, and it is in Mr and Mrs G's favour, for each year) and then add 8% simple interest from then until the date of settlement. I also agreed the settlement value used should be that as of September 2020.

I let both Mr and Mrs G, and Chase know in advance any planned changes to the redress I proposed and gave all parties the opportunity to comment before I reached this decision.

Putting things right

To put things right Chase should do the following:

- Chase should determine the cost of a 25-year level term joint life policy providing £115,500 of cover from September 1995 to September 2020.

Should Chase not be able to calculate what the cost would have been based on the rates and costs in 1995, I consider it fair and reasonable in the circumstances of this case that they should obtain a minimum of three quotes as at the present rates and costs for a 25-year policy based on Mr and Mrs G's circumstances, such as age, health and pre-existing conditions, as at the time the whole of life policy was sold. Chase should then use the cheaper of those quotes.

- Chase should then calculate the difference between what Mr and Mrs G have paid towards the RWOL policy between its inception in 1995 to date and what they would've paid had the 25-year level term policy been sold instead.

I've considered that Mr and Mrs G have remained on risk since September 2020 but had suitable advice been given, they wouldn't have been in this position and would've stopped paying premiums when the term policy ended. So, I'm satisfied this redress is fair and reasonable in the circumstances of this case.

- If Mr and Mrs G have suffered a loss, Chase should pay them the difference, less the surrender value of the RWOL policy as of September 2020.

- Chase should also calculate from the date each premium was paid (or should they choose, and it's in Mr and Mrs G's favor, for each year) and then add 8% simple interest from then until the date of settlement.

If Chase considers that they're required by HM Revenue & Customs to take off income tax from any interest due to Mr and Mrs G, they should tell them how much they've taken off. They should also give Mr and Mrs G a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Chase should provide details of its calculation to Mr and Mrs G in a clear, simple format.

Finally, as the surrender value of the RWOL policy is to be deducted from any redress due to Mr and Mrs G, it is for them to decide if they wish to cancel the policy or retain it.

Should Mr and Mrs G choose to retain the policy, they'd be doing so on the understanding they're responsible for all premiums due, and that the sum assured may potentially drop further, as low as £17,075, unless premiums are increased to maintain the sum assured in line with any future reviews.

My final decision

For the reasons I've given above, and in my provisional decision, I uphold this complaint and direct Chase de Vere Independent Financial Advisers Limited to do as I've explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 21 April 2023.

Sean Pyke-Milne
Ombudsman